REGION 6 EXECUTIVE SUMMARY

TOPIC: Louisiana Offshore Oil Port (LOOP), Air Emission Issues

DATE: February 2018 CONTACT: Melanie Magee, x7161; Jeff Robinson, x6435

PURPOSE/ACTION NEEDED: Informational

BACKGROUND:

- LOOP was organized in 1972 as a joint venture of Marathon Pipe Line LLC, Shell Oil Company and Valero Terminalling and Distribution Company. Pursuant to the provisions in the Deepwater Port Act (DPA) of 1974, the Department of Transportation (DOT) originally licensed LOOP as an offshore oil import facility on December 19, 1976. To date, LOOP is the only port in the U.S. capable of offloading a wide range of vessels including medium range tankers and "supertankers."[1] LOOP has both onshore and offshore facilities.
- The Marine Offloading Terminal is part of the LOOP Deepwater Port Complex and is located roughly 18 nautical miles off the coast of Louisiana (33.34 km or 20.7 mi), in the Gulf of Mexico - on the seaward side of the state territorial waters of the State of Louisiana. The Offshore Marine Terminal consists of a pumping platform, control platform and three single-point mooring buoys used for the offloading of crude tankers. Additional onshore LOOP facilities included in the Deepwater Port Complex are the Clovelly Dome Storage Terminal in Cut Off, LA, the Small Boat Harbor in Leeville, LA, the Fourchon Booster Station in Leeville, LA, the Operations Control Center in Galiano, LA, various pipelines, and a brine reservoir.
- In the deepwater port licensing process, the U.S. Coast Guard (USCG) and DOT, Maritime Administration (MARAD) assume lead agency responsibilities for consulting with other Federal and State agencies. The USCG and MARAD are serving to integrate the project analysis and consultation required in accordance with the National Environmental Policy Act (NEPA) review required at 40 CFR § 1502.25. LOOP has submitted a request to amend the Port's Operations Manual contained in the existing deepwater port license to **convert a portion of the existing crude oil importing operation to accommodate crude oil exporting operation.**[2]
- As a part of the NEPA review and approval process, LOOP submitted an Environmental Impact Analysis to supplement the existing Environmental Impact Statement (EIS) completed in 1976. In EPA's role as a cooperating agency, the **Coast Guard and MARAD have requested EPA to address potential air quality impacts and air permitting needs for LOOP's Offshore Marine Terminal**.
- (b) (5) [redacted]

[1] Supertankers importing oil to LOOP are designated as either "very large crude carriers" (VLCCs) or "ultra large crude carriers" (ULCCs). These ships can be longer than the Empire State Building is tall. The *Texaco Caribbean* is a VLCC that travelled nearly 10,000 miles in 1981 to become the first ship to reach LOOP's Marine Terminal in the Gulf of Mexico.
[2] LOOP Marine Terminal Bi-Directional Main Oil Pipeline Project, Project Description dated March 22, 2017.

TIMELINE (Air Issues Only):

Date	Event Description
November 21, 2017	USCG and MARAD contacted EPA Region 6, and other review agencies, to request agency review comments on LOOP's proposed Bi-Directional Main Oil Pipeline Project.
December 7, 2017 and January 10, 2018	USCG and MARAD conference call with cooperating agencies, including EPA Region 6, to discuss preliminary review issues and LOOP's private outside counsel's November 22, 2017 memorandum to the USCG discussing CAA jurisdiction and obligations.
January 17, 2018	Region 6 ORC led conference call with interagency attorneys to discuss CAA jurisdiction in the western Gulf of Mexico
January 30, 3018	Conference Call with USCG and MARAD, and other cooperating agencies, to discuss EPA's CAA authority and jurisdiction in the western Gulf of Mexico and draft response letter to USCG and MARAD. Based on the conference call discussion, the draft letter was revised to be sent directly to LOOP from EPA Region 6.
February 5, 2018	Letter notifying LOOP of EPA's CAA authority and jurisdiction in the western Gulf of Mexico was sent by Rob Lawrence on February 5, 2018 to Mr. Chris Labat, Vice President of Engineering and Technology, LOOP.
February 6, 2018	Conference call was held with LOOP's private outside counsel and Region 6. LOOP representatives were not in attendance. LOOP's private counsel responded that an additional response letter water sent to the USCG and MARAD on December 18, 2017 and a copy would be sent to Region 6. Response letter received by Region 6 on February 6, 2018.
February 12, 2018	Conference call was held with LOOP's private outside counsel and Region 6 to discuss EPA's preliminary review of the December 18, 2017 memorandum. LOOP representatives were not in attendance. Additional information is requested to be submitted to Region 6 by February 23, 2018.

REGULATORY BACKGROUND:

- In accordance with DPA, the authority to issue CWA and CAA permits for deepwater port projects located seaward of state waters resides with EPA. EPA is required to issue the relevant air and water permits based on regulations that would otherwise be applicable in the nearest adjacent coastal state that are not inconsistent with federal law…in this case Louisiana. EPA regards the DPA, as the primary source of its authority to apply the CAA to activities associated with deepwater ports.[3] The DPA defines a "deepwater port" to mean "any fixed or floating manmade structure other than a vessel, or any group of such structures, …used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any state, …include[ing] all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port…."[4] The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as "new sources" for CAA and CWA purposes. Pre-construction and operating permits for air emissions for deepwater port facilities are issued by EPA Regions 1 - 4, 6, 9 and 10. Region 6 issued CAA permits to Port

[3] Section 19 of the DPA, 33 U.S.C. § 1518(a)(1), provides that "the Constitution, laws, and treaties of the United States" apply to deepwater ports and to activities connected, associated, or potentially interfering with their use or operation "in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State." In addition, Section 3 of the DPA, 33 U.S.C. § 1502(9)(D), states that a deepwater port "shall be considered a 'new source' for purposes of the Clean Air Act." The Secretary of Transportation interprets the DPA as requiring a unified application for all necessary federal permits and close coordination between responsible federal agencies, but not as requiring issuance of a single permit. "Federal Agencies with permit responsibilities such as the EPA and MMS (Minerals Management Service, currently the Bureau of Ocean Energy Management, BOEM) will retain all distinct permit issuance authority." USCG Memorandum, "Environmental Planning Aspects of the Deepwater Port Act" (1 April 2003)

[4] 33 U.S.C. § 1502(9)

Pelican and El Paso Energy Bridge (formerly Excelerate Gulf Gateway) deepwater ports both of which were in the Western Gulf of Mexico.

The Outer Continental Shelf Lands Act (OCSLA)[5] establishes air pollution control requirements, including provisions related to permitting, monitoring, reporting, fees, compliance and enforcement, for facilities subject to the CAA. An OCS source is generally defined as a source that is subject to the OCSLA and is involved in the exploration, development and production of minerals and includes offshore wind farm installation. Subsequent to the enactment of OCSLA, the CAA was amended to added § 328 of the CAA. This amendment transferred authority for air permitting from EPA to the Department of the Interior (DOI) for OCSLA sources in the Gulf of Mexico west of longitude 80 degrees 30 minutes (Western Gulf essentially Louisiana and Texas). If a project is located seaward of state waters in the western Gulf and meets the definition of an OCS source, DOI though the Bureau of Ocean Energy Management (BOEM) is responsible for regulating the air emissions.

LOOP'S LEGAL MEMORANDUM:

- Apparently as a result of an inquiry to the LOOP facility from the Coast Guard concerning the regulatory status of their air emissions, LOOP requested a legal analysis from a private law firm on the matter. The Memorandum was then forwarded to EPA Region 6 from USCG. In the Memorandum, dated November 22, 2017, LOOP claims that it's an offshore marine terminal and operations at the terminal which is in the Gulf of Mexico west of 87.5 degrees longitude, are subject to the exclusive jurisdiction of DOI and not EPA in accordance with § 328 of the CAA. In designing, building and operating the Bi-directional Oil Pipeline Project, it is LOOP's position that LOOP is not required to engage in the EPA permitting process or to consider EPA emissions standards.

EPA REGION 6 LEGAL ANALYSIS:

- (b) (5) [redacted]
- [redacted]

AIR PERMITTING BACKGROUND:

- EPA Region 6 has not received any air permit applications or air emissions information for the existing LOOP Offshore Marine Terminal or proposed modifications to the offshore facility. EPA databases and files do not contain any air emissions related information for LOOPs offshore operations. Other federal agencies and LDEQ have very limited process related information for LOOP and do not have sufficient information for air emission estimations.
- LDEQ has issued a Prevention of Significant Deterioration (PSD) pre-construction and title V operating permit for the onshore portion of the LOOP Deepwater Port Complex.
- The EIS from 1976 and updated supplement contains very limited information related to air quality impacts and any determinations by EPA for obligations related to Endangered Species Act (ESA)[6], Magnuson-Stevens Fishery Conservation and Management Act[7], National Historic Preservation Act (NHPA)[8] and Class I impacts[9] would be technically unsupported.

MEDIA AND PUBLIC CONCERNS:

- For the LDEQ air permitting actions associated with the onshore portion of the LOOP Deepwater Port Complex, no public comments were received.
- The Louisiana Bucket Brigade has recently commented in news articles that LOOP's crude export plan is "on our radar." A concern that is highlighted by the Louisiana Bucket Brigade is for a vapor recovery system for LOOPs loading/unloading operations.

OPTIONS:

- (b) (5) [redacted]
- [redacted]

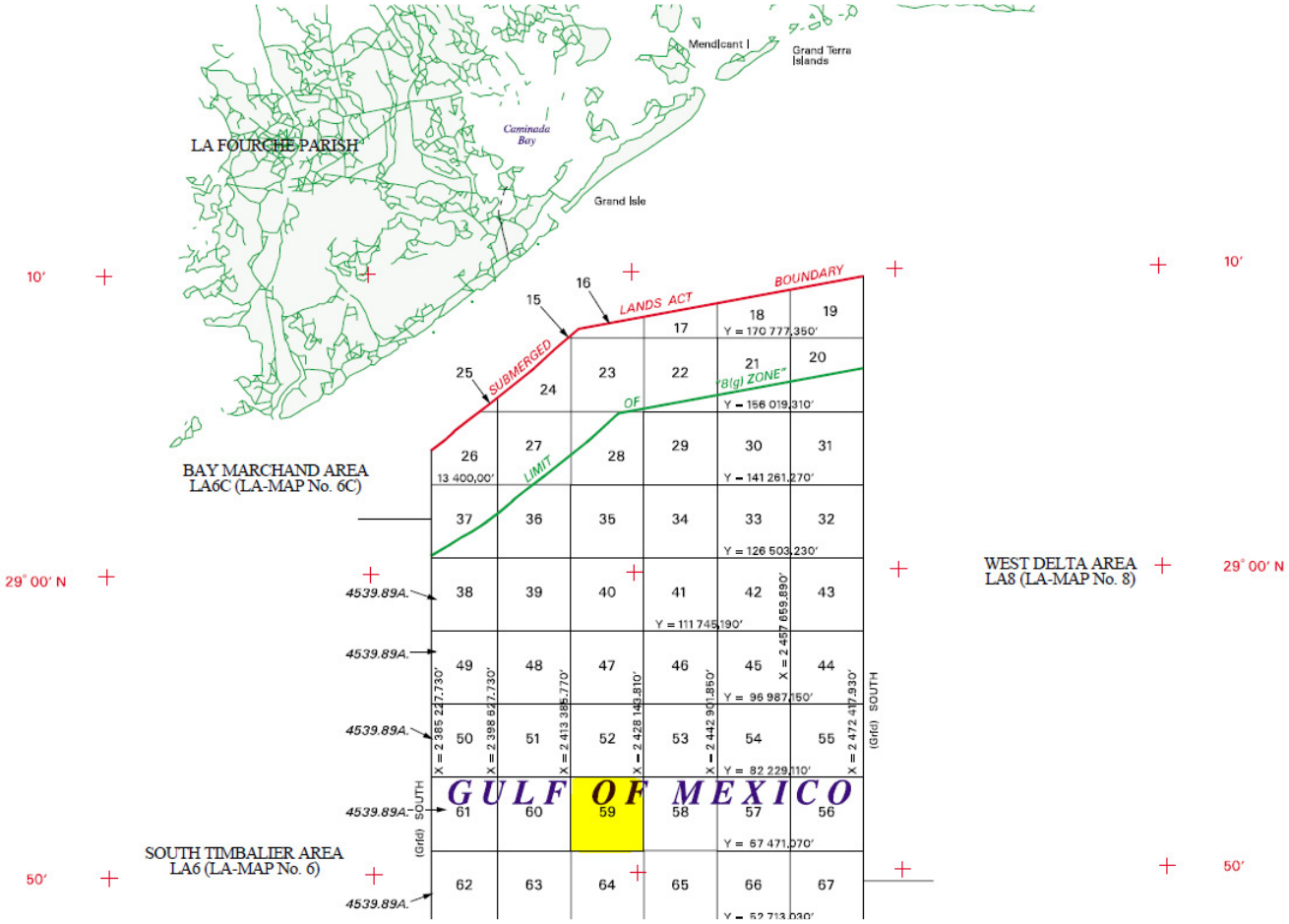
[6] Pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) (16 U.S.C. § 1536) and its implementing regulations at 50 CFR part 402, EPA is required to ensure that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any federally-listed endangered or threatened species or result in the destruction or adverse modification of such species' designated critical habitat.

[7] The 1996 Essential Fish Habitat (EFH) amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) set forth a mandate for NOAA's National Marine Fisheries Service (NMFS), regional fishery management councils (FMC), and other federal agencies to identify and protect important marine and anadromous fish habitat.

[8] Section 106 of the NHPA requires EPA to consider the effects of this permit action on archaeological resources or historic structures that are eligible for inclusion in the National Register of Historic Places.

[9] Class 1 federal lands include areas such as national parks, national wilderness areas and national monuments. These areas are granted special air quality protections under Section 162(a) of the CAA. Depending on the air emission levels and proximity to a Class 1 area (100 kilometers), the operator of any new major stationary source or major modification that may affect visibility in a Class 1 area(s) is required to provide written notification, including the visibility analysis and all information relevant to their permit application to the Federal Land Manager(s) for that area, in accordance with 40 CFR § 51.307. The Breton National Wildlife Refuge is a Class 1 area and is located in southeastern Louisiana in the offshore Breton Islands and Chandeleur Islands.

General Location of LOOP: OCS Block 59 within BOEM's Grand Isle Area Leasing Map Area[10]



[10] The BOEM OCS Block Diagram does not reflect recent shoreline changes. The Submerged Lands Act and Section 8(g) Zones boundaries were permanently immobilized ("fixed") by actions of the Supreme Court for Louisiana (1981). The red line on the map show the "Submerged Lands Act Boundary" and the green line shows the OCSLA '8(g) Zone.' The '8(g) Zone' establishes an area where oil and gas revenues are shared with the coastal states.